APPENDIX

FEDERAL ENERGY REGULATORY COMMISSION

Washington, D.C. 20425

CHAIRMAN

April 9, 1992

Honorable Philip R. Sharp
House of Representatives
Washington, DC 20515

Dear Mr. Sharp:

Thank you for your letter of February 11, 1992, concerning the status of the proceedings in *Indiana and Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company,* Docket No. EL88-1-000, and *Indiana Michigan Power Company,* Docket Nos. ER88-31-000 and ER88-32-000.

In Docket No. EL88-1-000 (the complaint proceeding), the Indiana Municipal Power Agency (Power Agency) claims that Indiana Michigan Power Company (Indiana Michigan) overpaid for coal burned at its Breed and Tanners Creek 4 generating facilities, and for coal transportation facilities (railcars, towboats, barges and a rail-to-barge transloading facility known as the Donald C. Cook Coal Terminal) operated by Indiana Michigan in association with other corporate affiliates, and that these overpayments resulted in unjust and unreasonable rates for Indiana Michigan's wholesale customers.

In Docket Nos. ER88-31-000 and ER88-32-000 (the rate proceedings), the Power Agency opposes Indiana Michigan's proposed rate increases to three municipal-owned electric systems in Indiana which are members of the Power Agency. Other wholesale customers of Indiana Michigan initially participated in the complaint and rate proceedings, but then settled with the company and are no longer participants.

The Commission initially consolidated the complaint and rate proceedings and set them for hearing. The presiding administrative law judge, however, divided the proceedings into a rate phase (Phase I) and a complaint phase (Phase II) because of procedural delays in the complaint proceeding. On November 20, 1989, the presiding judge issued an initial decision in Phase I, finding that the proposed rate increases were not shown to be just and reasonable in part. *Indiana Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company*, 49 FERC ¶ 63,020 (1989). Subsequently, on June 7, 1990, the presiding judge issued an initial decision in Phase II, finding a violation of a settlement agreement and overpayments of certain transportation costs. *Indiana Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company*, 51 FERC ¶ 63,019 (1990).

Both the Phase I (rate) and Phase II (complaint) proceedings are now pending on exceptions to the presiding judge's initial decisions.

The Phase I (rate) proceeding contains numerous complicated cost-of-service issues. The Commission is currently considering the merits of this proceeding, and expects to consider a final decision in the late spring.

Issuance of a final opinion disposing of the exceptions in the Phase II complaint proceeding, however, is complicated by a jurisdictional allocation issue between this Commission and the Securities and Exchange Commission (SEC) over which agency has jurisdiction to regulate certain transactions between subsidiaries of registered electric-utility holding companies. Because Indiana Michigan is a wholly-owned subsidiary of the American Electric Power System (AEP), it is subject to regulation by both the SEC under the Public Utility Holding Company Act of 1935 (PUHCA), and this Commission under the Federal Power Act.

The latest aspect of this jurisdictional issue involves an opinion by the United States Court of Appeals for the District of Columbia Circuit, *Ohio Power Company v. FERC*, No. 88-1293 (D.C. Cir. Feb. 4, 1992), which, on remand from the Supreme Court in *Arcadia v. Ohio Power Company*, 111 S.Ct. 415 (1991), specifically held that section 35.14(a)(7) of this Commission's regulations (18 C.F.R. § 35.14(a)(7) (1991)), requires this Commission to defer to SEC rulings concerning prices paid by an AEP affiliate for coal from a second AEP affiliate. This decision has potential ramifications for the Phase II complaint proceeding because: (a) the SEC participated in the settlement the judge found was violated (the settlement proceeding involved the reasonableness of rates for coal supplied to an AEP electric company subsidiary from AEP-controlled mining facilities in Utah); and (b) the SEC issued rulings pertaining to costs of the transportation at issue in Phase II, which involved arrangements between AEP affiliates. If the D.C. Circuit's latest opinion is left unchanged, it is conceivable that the Commission may be without jurisdiction to resolve the issues in Phase II.

In view of this, I am unable, at this time, to determine when the Commission will be able to issue a final opinion in Phase II.

A copy of your letter and this response have been placed in the public files in Docket No. EL88-1-000, *et al.* If I can be of any further assistance to you in this or any other Commission matter, please do not hesitate to contact me.

Yours truly,

/s/ Martin L. Allday
MARTIN L. ALLDAY